

REMARKS

Restriction requirement

The Examiner has required restriction to one of the following inventions:

- I. Claims 1-30, drawn to a chip comprising oligonucleotide probes, classified in class 536, subclass 23.1.
- II. Claims 31-63, drawn to a method detecting SARS-CoV, classified in class 435, subclass 6.
- III. Claims 64-68, drawn to an oligonucleotide primer or kit, classified in class 536, subclass 24.33.
- IV. Claims 69-74, drawn to an oligonucleotide probe or kit, classified in class 536, subclass 24.31.

Applicants hereby elect **Group I (claims 1-30)** with traverse. Applicants respectfully traverse this restriction requirement for the following reasons.

The Examiner alleged that the inventions listed as Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because the claims are not unified by a corresponding special technical feature which distinguishes over prior art. The Examiner further alleged that “the chip of claim 1 is written in a broad manner, encompassing a chip with virtually any 10-mer as long as that specific 10-mer has complementarity to a SARS sequence” (the OA at page 2). The Examiner cited Fodor et al. (US 6,355,432), which teaches an oligonucleotide array or chip comprising every 10-mer imaginable, as anticipating reference that allegedly destroys the unifying technical feature distinguishing the present claims over prior art.

Applicants respectfully submit that the unifying technical feature that distinguishes the present invention over prior art is not the placement of a 10-mer complementary to a SARS sequence on a chip, but rather the combination of sequences complementary to a SARS sequence and sequences complementary to a nucleotide sequence of a non-SARS-CoV infectious organism on one biochip for simultaneously detecting SARS and non-SARS infections in the same subject. Since Fodor does not teach the presently claimed combination of SARS and non-SARS probes on the same biochip, Fodor does not anticipate the unifying technical feature that distinguishes the invention over prior art. Thus, it is submitted that the lack of unity argument is without merit.

Species election

The Examiner further requested that if Applicants elect Group I, they must also elect a specific sequence from Table 13 corresponding to Replicase 1A or 1B (claims 9, 10), corresponding to the N gene of SARS CoV (claims 11, 12), and corresponding to the S gene of SARS CoV (claims 13, 14). Applicants hereby provisionally elect the following SARS sequences, with traverse:

SARS CoV Replicase 1A or 1B: **PBS00024**

(TCATAGCTAACATCTTTACTCCTCTTGTGCAACCTGTGGGTGCTTTAGATGTGTCTGCTT
CAGTACTGGC)

SARS CoV Nucleocapsid (N) gene: **PBS00040**

(GAGGTGGTGAAACTGCCCTCGCGCTATTGCTGCTAGACAGATTGAACCAGCTTGAGAG
CAAAGTTTCTGG)

SARS CoV Spike glycoprotein (S) gene: **PBS00044**

(CACCTGGMCAAATGCTTCATCTGMGTGCTGTTCTATATCAAGATGTTMCTGCACTGA
TGTTTCTAC)

The Examiner alleged that the SARS probes listed in Table 13 lack unity of invention in view of Fodor above (the OA at page 3). Applicants respectfully disagree.

As noted above, the unifying technical feature of the present invention is the combination of SARS and non-SARS nucleotide probes on the same biochip for simultaneous detection of multiple infections in the same subject. Applicants acknowledge that the sequences of the SARS and other viral genomes were known in the art at the time of the invention. Applicants also acknowledge that the complete sequences of SARS CoV Replicase 1A and 1B, SARS CoV Nucleocapsid (N) gene, and SARS CoV Spike glycoprotein (S) gene were known in the art at the time of the invention. However, the prior art does not teach the combination of SARS nucleotide probes with non-SARS nucleotide probes on the same chip. Since the key inventive feature is the combination of sequences and not the sequences themselves, it is submitted the species election requirement was improper.

Applicants expressly reserve the right under 35 U.S.C § 121 to file a divisional application directed to the non-elected subject matter during the pendency of this application, or an application claiming priority from this application.

Applicants request examination of the elected subject matter on the merits.

CONCLUSION

If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the unlikely event that the transmittal form is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing **docket No. 514572002000**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: February 27, 2008

Respectfully submitted,

By: /Yan Leychkis/_____

Yan Leychkis

Registration No.: 60,440

MORRISON & FOERSTER LLP

12531 High Bluff Drive, Suite 100

San Diego, California 92130-2040

(858) 314-7702